89-235

SUPREME COURT U.S.
AUG 10 1989
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

United States Supreme Court

October Term, 1989

Irena Kalvans,

Petitioner,

v

Samaritan Health Center,

Respondent.

_____/

On Appeal from Supreme Court of Michigan

Petition for Writ of Certiorari

Irena Kalvans

In propria persona

3836 Bishop Road

Detroit, Michigan

48224

Tel. (313) 884-3318

Question Presented for Review

Did the Michigan Supreme Court violate Petitioner's constitutuional right to an impartial decision maker under the due process clause of the Fourteenth Amendment and decisions of the United States Supreme Court when it failed to grant Petitioner's Application for Leave to Appeal the bribed decision of the Michigan Court of Appeals?

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Cases

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Statement of the Grounds

The Michigan Supreme Court denied Petitioner's Application for Leave to appeal the bribed decision of the Michigan Court of Appeals on July 31, 1989. The Michigan Supreme Court's denial of leave to appeal is a violation of the decisions of the United States Supreme Court with respect to the federal question of an impartial decision maker as guaranteed by the due process clause of the Fourteenth Amendment. The statutory provision authorizing this Petition for a Writ of Certiorari is 28 U.S.C. #1257(3).

Constitutional Provision Involved

Amendment 14, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

Petitioner filed an Application for Leave to Appeal with the Michigan Supreme Court on December 27, 1988. On page 6 of her supporting brief, Petitioner stated, "Thebribery of the Court of Appeals by the Lombards violated Appellant's constitutional right to an impartial decision maker under the due process clause of the Fourteenth Amendment and decisions of the United States Supreme Court." The Michigan Supreme Court denied Petitioner's Application on July 31, 1989 stating, "On order of the Court, the application for leave to appeal is considered, and it is DENIED because we are not persuaded that the ques-

tion presented should be reviewed by this Court." Petitioner's Concise Statement of Material Proceedings and Facts stated to the Michigan Supreme Court that Petitioner was employed by the Michigan Department of Attorney General as an Assistant Attorney General for thirteen and a half years. Petitioner's Concise Statement included the following additional facts. Arthur Lombard and Frederica Lombard bribed Mary Roxburgh to file a Petition with the Wayne County Probate Court to declare Petitioner a mental incompetent and to appoint a legal guardian for Petitioner in order to hide the following facts: (1.) That Petitioner was dismissed from her employment with black and white frauds; (2.) That the Lombards suborned deliberately obvious perjury from the

Michigan Department of Attorney General; (3.) That the administrative law judge of the Michigan Civil Service Commission made findings of fact which were unrelated to the record; (4.) That the Michigan Court of Appeals made findings of fact which were unrelated to the record; (5.) That the Wayne County Circuit Court summarily disposed of Petitioner's tort action against the Lombards for intentional interference with Petitioner's employment contract on the basis of the affidavits filed by the Defendants, whereas Defendants and Petitioner had filed conflicting affidavits and long established Michigan legal precedents mandated a trial on the merits of the case; and (6.) That the Michigan Court of Appeals returned Petitioner's Claim of Appeal as a matter of right because

the Final Order entered by the Wayne County Circuit Court recited, over Petitioner's objections, that the order was not a final order. In her Grounds for Appeal, Petitioner stated to the Michigan Supreme Court that the decision of the Court of Appeals of Michigan was clearly erroneous because it excluded competent, material and relevant evidence that the witnesses who testified against Petitioner were bribed by Arthur Lombard and Frederica Lombard. Petitioner also stated in her Grounds for Appeal that Arthur Lombard and Frederica Lombard bribed the Wayne County Probate Court to: (1.) to declare Petitioner a mental incompetent; (2.) to refuse her request to appoint Edward Setlock, the attorney of Petitioner's choice, to act as her guardian; and (3.) to appoint as

Petitioner's guardian the attorney selected by Petitioner's adversary.

Argument

The due process clause of the Fourteenth Amendment to the United States Constitution guarantees to Petitioner the right to an impartial decision maker. In re Murchison, 349 U.S. 133, 136, 138; 75 S. Ct. 623; 99 L. Ed. 942 (1954) held that a fair trial in a fair tribunal is a basic requirement of due process and that fairness requires an absence of bias:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." (page 136) ***

> "Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impression of what had occurred in the grand jury room and his judgment was based in part on this impression, the accuracy of

> which could not be tested by cross-examination." (page 138)

The Michigan Court of Appeals was biased against Petitioner because of bribery by the Lombards and thereby denied Petitioner her constitutional right to a fair tribunal, as enunciated in Murchison, supra.

Aetna Life Insurance Co v Lavoie, 475 U.S. 813, 825; 89 L. Ed. 2d 823; 106 S. Ct. 1580 (1986) ruled that due process requires a judge to hold the balance between the parties nice, clear and true and not be biased:

> "We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama '" would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true."' Ward

409 U.S., at 60 (quoting Tumey v. Ohio, supra, at 532)."

The bribery of the Michigan Court of Appeals and the denial of leave to appeal by the Michigan Supreme Court deprived Petitioner of unbiased judges as required by Aetna, supra.

Goldberg v Kelly, 397 U.S. 254, 267, 271; 90 S. Ct. 1011; 25 L. Ed. 2d 287 (1969) held that an impartial decision maker was an essential requisite of due process:

"'The fundamental requisite of due process of law is the opportunity to be heard.'" (page 267) ***

"And, of course, an impartial decision maker is essential." (page 271)

The Michigan Court of Appeals, in being bribed by the Lombards, and the Michigan Supreme Court, in denying leave to appeal, failed to accord to Petitioner the due process of law of an impartial deci-

sion maker as required by Goldberg, supra.

Rochin v California, 342 U.S. 165, 172; 72 S. Ct. 205; 96 L. Ed. 183 (1951) ruled that due process of law requires an evaluation based on a disinterested inquiry:

> "In each case 'due process of law' requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims."

In denying Petitioner's Application for Leave to Appeal the bribed decision of the Court of Appeals, the Michigan Supreme Court denied Petitioner the due process of law of a disinterested inquiry set forth in Rochin, supra.

For the foregoing reasons and by virtue of the above authorities, Petitioner requests this Court to grant her

Petition for a Writ of Certiorari.

Irena Kalvans

Appendix

Michigan Supreme Court

Lansing, Michigan

Dorothy Comstock Riley

Chief Justice

Charles L. Levin

James H. Brickley

Michael F. Cavanaugh

Patricia J. Boyle

Dennis W. Archer

Robert P. Griffin

Associate Justices

Order

Entered: July 31, 1989

85069

IRENA KALVANS,

Respondent-Appellant,

v

SAMARITAN HEALTH CENTER,

Petitioner-Appellee.

SC: 85069

COA: 110977

LC: 88-806164-AV

LC: 809028 (Wayne Probate)

On order of the Court, the application for leave to appeal is considered, and it is DENIED because we are not persuaded that the question presented should be reviewed by this Court.

40725

I CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

July 31, 1989 Corbin R. Davis/s/

Clerk

Court of Appeals, State of Michigan

ORDER

Roman S. Gribbs

Presiding Judge

Harold Hood

Joseph B. Sullivan

Judges

Irena Kalvans v Samaritan Health Center

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

R A Gribbs/s/

A true copy entered and certified by Ronald L. Dzierbicki, Chief Clerk, on

12-21-88 Ronald L. Dzierbicki/s/

Date Chief Clerk

State of Michigan In the Circuit Court for the County of Wayne

Hon. John H. Gillis, Jr.

IRENA KALVANS, CASE NO.: 88 806164AV

Appellant. / PROBATE COURT NO.: 809028

IRENA KALVANS

In Pro Per

SUSAN H. ZITTERMAN (P33392)

JOHN PAUL HESSBURG (P39218)

Attorneys for Samaritan Health Center

an Interested Party /

ORDER

At a session of said Court held in the City of Detroit, County of Wayne, State of Michigan, on: Aug 12 1988 PRESENT: HON. JOHN H.GILLIS, JR. CIRCUIT JUDGE

This matter having come before this court at a hearing on August 11, 1988, and the court being duly advised in the premises;

IT IS HEREBY ORDERED THAT the Probate Court's decision is affirmed.

JOHN H. GILLIS, JR.

CIRCUIT COURT JUDGE

A TRUE COPY JAMES R. KILLEEN CLERK

BY signature illegible DEPUTY CLERK

State of Michigan In the Probate Court for the County of Wayne

Probate File No. 87-809028

In the Matter of the Estate of:

Irena Kalvans,

An Alleged Legally Incapacitated Person.

The Court issued no written opinion. The following is a verbatim quotation of the Court's oral opinion, "Based upon the Court's finding by more than clear and convincing evidence that the Respondent does not understand her need for treat-

ment, the Court will grant the Petition."